IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 1491 of 2005

Between:

P.Venkateswarlu, S/o P.V.Subbaiah, Retired Office Superintendent-I,
R/o Plot No.94, Vimaladavi Nagar, Malkajgiri, Hyderabad-47.

..... PETITIONER

AND

1 The Secretary to Chief Administrative officer, (Construction),
South Central Railway, Secunderabad.
2 The Chief Engineer (Construction II), South Central Railway,
Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue writ or order or direction more particularly one in the nature of writ of Mandamus declaring the action of the first respondent in imposing punishment of withholding an annual increment due on 01/06/2002 for a period of 2 years (Non-Recurring) vide proceedings Memorandum No.CE/C/V/S/MISC/PV, dt. 31/10/2002 of the 2nd respondent which is confirmed in OA.No.1490/2002, dt. 29/06/2004 on the file of the Central Administrative Tribunal is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and consequently direct the respondents to fix the pensionary benefits of the petitioner taking into account of due increments and all other attendant benefits etc., including promotion to the post of Chief office Superintendent and pass such other or further orders as this Hon'ble

Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.J.M.NAIDU

Counsel for the Respondents: MR.S.S.VARMA (ADDITIONAL CENTRAL GOVERNMENT STANDING COUNSEL)

The Court at the admission stage made the following:

ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by the Central Administrative Tribunal (for short Tribunal) in O.A.No.1490 of 2002, dated 29.6.2004.

2. The petitioner was working as Office Superintendent and he was entitled for Free Railway Pass for himself, his family members (plus) one attendant. He declared the details of his family members to the Department on 20.1.1998. It is the case of the petitioner that in March, 1998, he engaged a cook, which he is entitled under the Rules and he utilized the pass during the period 26.5.1998 to 31.5.1998 to go to Nellore from Secunderabad and back. It is also on record that after availing the pass and after return of the journey, the authorities recovered from the petitioner the cost of the fare of the attendant, who traveled along with the petitioner. Thereafter a charge memo was issued to the petitioner with the following imputation:

> "Sri P.Venkateswarlu, while working as OS.1, CAO/C/O/SC obtained first class free pass (privilege) No.353746 dated 2.2.98 for self, wife, unmarried daughter, aged 21 years and widow sister, aged 60 years only, ex.RMR to TPT via SC, KZJ, BZA, GDR and return via same route available upto 1.6.98 and misutilised the said pass by availing the benefit of taking an attendant, viz., Sri Sarangapani, an outsider ex.SC to NLR by train No.2760 of 26.5.98 in second class sleeper coach, S-11, berth No.23 and in return ex.NLR to SC by train No.7423 of 31.5.98 in second class sleeper coach S-8, berth No.40, though the attendant was not declared in his family declaration dt.20.01.98 for issue of passes/PTO's as defined under pass rules.
>
> Thus, Sri P.Venkateswarlu has violated Rule 3(1)(i) & 3(1)(iii) of Railway Services (Conduct) Rules, 1966".

The petitioner submitted an explanation to the said charge memo denying the charge and he has categorically stated that he is entitled to engage a cook,

whose name is Sarangapani, and though the name shown in the charge memo is also Sarangapani, he was not the person appointed by him. In the enquiry, the Enquiry Officer found that the petitioner has taken along with him an attendant by name Sarangapani, who is not the employee of the Railways. Accordingly he found that the petitioner was guilty of dereliction of duty on the ground that he ought to have mentioned the name of the attendant in the declaration given by him on 20.1.1998, and on that ground he was imposed with the punishment of withholding of two increments with non-cumulative effect by an order dated 4.6.2002. Against the said order, the petitioner herein filed an appeal but without any success. Thereafter he filed the above OA. The learned Tribunal holding that though there is no procedural irregularity, the petitioner ought to have mentioned the name of the attendant in his declaration and dismissed the OA. Against the said dismissal order, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submits that the very approach of the authorities is illegal and contrary to law. It is his further submission that the petitioner is entitled to take an attendant along with him and the fact that he took the attendant by name Sarangapani is not in dispute. He also submits that he need not mention the name of the attendant in the pass inasmuch as what is required is that he is entitled for one attendant. It is his submission that the train fare from Secunderabad to Nellore and back was also recovered from his salary. Therefore, he submits that the very imposition of punishment is illegal and contrary to law.

4. We have also heard the learned Standing Counsel for Railways.

5. Even though there is no procedural irregularity, we find no acceptable evidence before the authority leading to imposition of punishment against the petitioner. When the petitioner is entitled to take one attendant along with him, it is immaterial whether he took Sarangapani or any other person. Therefore, in the absence of any specific requirement that the name of attendant should be reflected in the declaration, it is always open for the petitioner to carry one attendant and in fact in this case the petitioner has taken one attendant, for whom the train fare also appears to have been recovered from him. Under these circumstances, we do not find that the petitioner has committed any misconduct under Rule 3(1)(i) and 3(1)(iii) of Railway Services (Conduct)

Rules, 1966. The fact that the attendant was employed in March, 1998 would itself indicate that he was not in a position to give the name or the details of the said person in the declaration given on 20.1.1998. Under those circumstances, we find that the order imposing punishment against the petitioner is wholly unsustainable.

6. In the result, the Writ Petition is allowed. No costs.

G.BIKSHAPATHY, J.

16th February, 2005.

P.S.NARAYANA, J.

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary to Chief Administrative officer, (Construction), South Central Railway, Secunderabad.
2 The Chief Engineer (Construction II), South Central Railway, Secunderabad.

3 The Registrar, Central Administrative Tribunal, Hyderabad.

4 2 CD copies.